

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 05 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

JUAN BENITO CASTRO, aka Tony
R.. Lanier

Defendant - Appellant.

No. 05-50216

D.C. No. CR-93-00093-GLT-1

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Gary L. Taylor, District Judge, Presiding

Argued and Submitted March 9, 2006
Pasadena, California

Before: WARDLAW and RAWLINSON, Circuit Judges, and CEBULL^{**},
District Judge.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Richard F. Cebull, U.S. District Judge for the District of Montana, sitting by designation.

On appeal, Juan Benito Castro (Castro) challenges his sentence, asserting that the judge's factfinding violated his constitutional rights under the Fifth and Sixth Amendments.

1. Judicial factfinding under an advisory Guidelines regime does not violate the Sixth Amendment. *See United States v. Booker*, 543 U.S. 220, 250-52 (2005); *see also United States v. Ameline*, 409 F.3d 1073, 1081 (9th Cir. 2005) (en banc). *Booker* did not alter the preponderance of the evidence standard for factfinding set forth in *United States v. Howard*, 894 F.2d 1085, 1090 (9th Cir. 1990). *See Ameline*, 409 F.3d at 1086.

2. The district court was not required to make the drug quantity finding beyond a reasonable doubt to comport with the guarantee of due process contained in the Fifth Amendment. *See United States v. Melchor-Zaragoza*, 351 F.3d 925, 928 (9th Cir. 2003); *see also McMillan v. Pennsylvania*, 477 U.S. 79, 84, 90-91 (1986); *Apprendi v. New Jersey*, 530 U.S. 466, 487 n.13 (2000).

AFFIRMED.